

# Archives Advice No. 11

## Records Management and the Agency Lawyer

Considerations for Agency Attorneys

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### Why is records management important?

An agency without an active records management program that covers both paper and electronic records is exposing itself to wholly preventable legal risks on a daily basis. As agency counsel, you are responsible for ensuring that your agency's defenses are not unnecessarily compromised by record-keeping oversights and negligence.

### What are the consequences of ignoring records management?

#### ***The agency is not complying with state law***

It is the duty of every state agency to "establish and maintain an active and continuing program for the economical and efficient management of records" (O.C.G.A. 50-18-94(3)).

#### ***Agency records are disorganized and contain non-essential data***

In the event of civil litigation, the discovery process will rapidly and painfully reveal the consequences of poor or non-existent records management. Without agency-wide controls on the creation and maintenance of records, attempts to find relevant data in a sea of disorganized files stored in multiple formats, copies, desks, hard drives, and offices will be difficult, time-consuming, and expensive.

#### ***Official records are not being created or maintained***

The records being searched for may or may not exist in the first place. An official agency record reflects a conscious effort on the part of that organization to commit to and record a position. These official records are the product of a conscious process which requires documentation. In fact, state law requires each agency to "cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities" (O.C.G.A. 50-18-94(1)).

#### ***Destruction of agency records is handled haphazardly***

The records in question may have existed for a time before being destroyed without proper authorization. Records management programs assign retention periods to records based on administrative need and legal requirements. In the absence of such a program, record storage and maintenance is arbitrary. Some records may not be kept long enough, and some records may be kept for too long. Case law suggests that courts are often suspicious when records are destroyed without reference to a regular, systematic retention plan.



### GEORGIA ARCHIVES

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### ***Agency records are not reliable***

Relevant, official records may be identified, but the documents in question might be of questionable authenticity. Alteration destroys or distorts the original record, rendering it useless as legal evidence. If the process for creating organization records is not controlled, records may be subject to alteration or falsification. Electronic records are particularly susceptible to this issue.

## **How can these problems be prevented?**

### ***Organizing Records***

A records management program provides the framework for orderly records creation and classification by identifying and controlling agency documents. It is essential that records managers, in consultation with information technology administrators, intervene at the earliest possible juncture in records creation in order to impose this framework.

### ***Creating Official Records***

These records are necessary to reflect the official position of the agency during litigation. Properly documented and executed records management procedures provide legally-admissible proof that a given record was or was not created over the normal course of business. Records management provides documentation of the creation of official records.

### ***Ensuring Proper Record Retention and Destruction***

An effective records management program is necessary in order to protect records from improper or unauthorized retention or destruction. This will ensure that official records will not be destroyed until the end of their assigned retention period. Diligent execution will also ensure that records are indeed destroyed when that period has ended, rather than being unnecessarily retained. Records management helps ensure that records are available when needed and destroyed when that time has expired.

### ***Creating Reliable Records***

In order to maintain reliable records, the organization must employ such methods as access monitoring and user verification for paper and electronic records. An effective records management program protects organizational records from unauthorized alteration. Records management programs can recommend best practices for securing both paper and electronic records.

## **Who is responsible for records management?**

Senior administrators should be made aware of the role of records management in an agency's risk management regime. Members of all relevant departments, including the legal department, should provide regular input. Once a records management program is in place, it is also necessary to periodically review records retention schedules to ensure that they reflect the most recent laws concerning agency records.

While administrators have ultimate responsibility for program creation, the records management process should be consultative, collaborative, and ongoing.

## **Further Information**

The Georgia Archives is ready to provide assistance to lawyers who have questions about records management. Please contact us at (678) 364-3790 or [rims@sos.state.ga.us](mailto:rims@sos.state.ga.us).